UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

5:18-CR-0260
(GTS)

EDWIN CUELLO,

Defendant.

APPEARANCES:

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GLENN T. SUDDABY, Chief United States District Judge

DECISION and ORDER

Currently before the Court, in this criminal prosecution of Edwin Cuello ("Defendant") for one count of being a felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2), is Defendant's motion to suppress all evidence and statements seized or derived from a stop and search of his person and backpack on July 9, 2018. (Dkt. No. 12.) For the reasons set forth below, Defendant's motion is denied.

I. RELEVANT BACKGROUND

Because this Decision and Order is intended primarily for the review of the parties, the Court will assume the reader's familiarity with this action's procedural history and the general events giving rise to Defendant's arrest.

A. The Parties' Arguments on Defendant's Motion to Suppress

1. Defendant's Memorandum of Law

Generally, in his memorandum of law, Defendant asserts two arguments in support of his motion to suppress. (Dkt. No. 12, Attach. 1, at 2-8 [Def.'s Mem. of Law].) First, Defendant argues that he was seized as a result of the following actions by the officers: (a) their ordering him to set his bicycle on the ground, (b) their questioning him, (c) their making him feel that he had no choice but to turn his backpack over to them, and (d) their chasing him when he fled on foot. (*Id.* at 5.)

Second, Defendant argues that the officers did not have reasonable suspicion to believe that he was engaged in criminal activity and therefore did not have cause to either stop him or question him about the contents of his backpack. (*Id.* at 5-8.) More specifically, Defendant argues that the fact that he was riding his in bicycle in a high-crime area was not sufficient to create reasonable suspicion to stop him because the officers did not see anything else that would lead them to believe that criminal activity was afoot. Moreover, Defendant argues that, even if the fact that his bicycle lacked a headlight in violation of the New York Vehicle and Traffic Law could constitute reasonable suspicion to stop him, the questions asked of him (which were unrelated to the lack of a headlight including what was in his backpack) unlawfully prolonged the stop because his nervous demeanor and the heavy appearance of his backpack did not

provide reason to suspect further criminal activity. (*Id.*) Defendant therefore argues that the search of his backpack was illegal and all evidence related to that search, including the firearm found in his backpack, should be suppressed.

2. The Government's Opposition Memorandum of Law

Generally, in opposition to Defendant's motion, the Government asserts three arguments. (Dkt. No. 13, at 3-6 [Govt.'s Opp'n Mem. of Law].) First, the Government argues that the Court should deny the motion to suppress because (a) the officers observed a traffic violation and therefore had reasonable suspicion to stop Defendant, and (b) flight from police in a high-crime area is sufficient to establish reasonable suspicion. (*Id.* at 3-5.) The Government notes that Defendant was stopped in a high-crime area for an observed traffic violation and briefly interviewed before he voluntarily opened his backpack for the officers and fled. (*Id.* at 5.)

Second, the Government argues that Defendant abandoned his backpack during the encounter and therefore lost any reasonable expectation of privacy in his backpack, meaning that recovery of the firearm was not the result of an unconstitutional search. (*Id.* at 5.)

Third, the Government argues that, even if Defendant still had a reasonable expectation of privacy in the backpack, the firearm and ammunition would have been inevitably discovered because Defendant would have been arrested for a parole violation after the officers identified him and checked for outstanding warrants. (*Id.* at 5-6.) More specifically, the Government argues that, because the officers would have arrested him on his outstanding warrant, a search of his backpack would have been conducted incident to that arrest, and the firearm and ammunition would have been discovered. (*Id.*)

3. Defendant's Reply Memorandum of Law

Generally, in reply to the Government's opposition, Defendant asserts three arguments. (Dkt. No. 14, at 2-6 [Def.'s Reply Mem. of Law].) First, Defendant argues that extending the stop beyond addressing the headlight violation was unconstitutional because (a) there was no further evidence of criminal activity beyond the traffic infraction, and (b) the case relied on by the Government to support its argument that flight in a high-crime area constitutes probable cause is inapposite because the *Terry* stop of Defendant had already occurred before (rather than as a result of) Defendant's flight in a high-crime area. (*Id.* at 3-5.)

Second, Defendant argues that he did not consent to a search of his backpack or voluntarily abandon it; rather, he opened the backpack to show the officers the gloves he stated were inside (not to allow them to look inside), and he turned over the backpack based on the officers' orders to do so and his belief that he had no choice but to comply with those orders. (*Id.* at 5.)

Third, Defendant argues that the Government has not shown that the firearm and ammunition would have been inevitably discovered because (a) it is not clear that the officers would have run his name through the warrant database for a minor traffic infraction, and (b) Defendant provided only a portion of his name and therefore his outstanding warrant may not have appeared in any search the officers would have conducted. (*Id.* at 5-6.)

B. The Suppression Hearing

The Court held a hearing regarding Defendant's motion on December 10, 2018. At the hearing, the Court received documentary evidence and testimony from Onondaga Crime Analyst Kimberly Brundage regarding the incidences of crime in the area where Defendant was stopped,

as well as testimony from Officer William Coleman and Officer Michael Birklin, both of whom were present at the stop that is the subject of this motion. Finally, Defendant testified on his own behalf.

II. RELEVANT LEGAL STANDARD

Because the parties have, in their respective submissions on Defendant's motion, demonstrated an adequate understanding of the legal standard governing Defendant's motion to suppress, the Court will not summarize those legal standards in this Decision and Order, which is intended primarily for the review of the parties. Rather, the Court will merely refer to certain points of law and cases where necessary in its analysis of Defendant's motion in Part III of this Decision and Order.

III. ANALYSIS

A. Whether the Stop Was Supported by Reasonable Suspicion

After careful consideration, the Court answers this question in the affirmative for the following reasons.

In order to justify a traffic stop, officers need only have reasonable suspicion (rather than probable cause) to believe that a traffic violation has occurred. *United States v. Stewart*, 551 F.3d 187, 193 (2d Cir. 2009); *see also McClellan v. Smith*, 02-CV-1141, 2009 WL 3587431, at *8 (N.D.N.Y. Oct. 26, 2009) (Sharpe, J.) (recognizing that a stop is reasonable "if the police objectively believe there has been a violation of the traffic laws") (citing *United States v. Miller*, 382 F. Supp. 2d 350, 366 [N.D.N.Y. 2005]). "This objective inquiry disregards the officer's subjective motivation and asks instead whether a reasonable officer would suspect unlawful activity under the totality of the circumstances." *United States v. Diaz*, 802 F.3d 234, 239 (2d Cir. 2015).

Section 1236(a) of the New York Vehicle and Traffic Law indicates that "[e]very bicycle when in use during the period from one-half hour after sunset to one-half hour before sunrise shall be equipped with a lamp on the front which shall emit a white light visible during hours of darkness from a distance of at least five hundred feet to the front and with a red or amber light visible to the rear for three hundred feet." N.Y. Veh. & Traf. L. § 1236(a). In his incident report narrative, Officer Birklin indicated that he and Officer Coleman conducted a stop of Defendant and another individual at approximately 3:20 a.m. for a perceived violation of this statute. (Dkt. No. 12, Attach. 2, at 15; Dkt. No. 12, Attach. 2, at 13.) Defendant admitted in his affidavit that he did not have a light on the bicycle he was riding and that he was not aware that he needed lights on a bicycle. (Dkt. No. 12, Attach. 2, at 20 [Def.'s Aff.].) Given that Defendant admits he did not have a light on his bicycle at the relevant time, there can be no question that Officers Coleman and Birklin's decision to stop Defendant was supported by a reasonable suspicion that Defendant was violating N.Y. Veh. & Traf. L. § 1236(a) and therefore the stop was lawful.

B. Whether the Officers Unlawfully Prolonged the Traffic Stop by Inquiring About Defendant's Backpack

After careful consideration, the Court answers this question in the negative for the following reasons.

"A seizure for a traffic violation justifies a police investigation of that violation," and "the tolerable duration of police inquiries in the traffic-stop context is determined by the seizure's 'mission'–to address the traffic violation that warranted the stop." *Rodriguez v. United States*, 135 S.Ct. 1609, 1614 (2015). Even though a traffic stop may become unlawful if it is prolonged beyond the time reasonably required to complete the mission of the stop, "an officer's

mission includes 'ordinary inquiries incident to [the traffic] stop,'" including "checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance." *Rodriguez*, 135 S.Ct. at 1615. A traffic stop may be lawfully extended if, in the course of conducting the stop, the officer has reasonable suspicion that criminal activity may be afoot. *United States v. Santillan*, 902 F.3d 49, 56-57 (2d Cir. 2018). In determining whether reasonable suspicion exists, the Court must "view the totality of the circumstances through the eyes of a reasonable and cautious officer on the scene, whose insights are necessarily guided by the officer's experience and training." *Santillan*, 902 F.3d at 56.

Based on the submitted evidence and the hearing testimony, it is undisputed that, upon initiating the stop, Officer Coleman asked Defendant questions regarding (a) his name, (b) the lack of a light on his bicycle, and (c) whether the bicycle was registered, all of which were directly related to the reason for the stop. (Dkt. No. 12, Attach. 2, at 13.) Officer Coleman then arguably extended the stop by inquiring about what was in Defendant's backpack. (*Id.*) However, considering the totality of the circumstances, the Court finds that such extension was based on reasonable suspicion of possible further criminal activity based on (a) the fact that the area in which Defendant was stopped was a high-crime area with known gang activity, (b) the late hour (approximately 3:20 a.m.), (c) Officer Coleman's observation that Defendant appeared to be nervous, and (d) Defendant's inability to produce identification. (*Id.*) *See also Illinois v. Wardlow*, 528 U.S. 119, 124 (2000) (noting that presence in a high-crime area, while not dispositive, is a relevant factor when evaluating whether police have reasonable suspicion); *Santillan*, 902 F.3d at 57 (finding that reasonable suspicion existed based on the defendants'

nervous behaviors including avoidance of eye contact and shaking hands, and their inability to provide a clear answer as to where they had come from); *United States v. Ponce*, 10-CR-0550, 2011 WL 13128598, at *4 (N.D.N.Y. June 28, 2011) (Suddaby, J.) (finding reasonable suspicion to conduct a pat-search where the defendant was stopped in a high crime area, displayed nervous behavior, emptied his pockets as if anticipating a search, and told the officer that he had a prior conviction for manslaughter).

Having found that Officer Coleman's inquiry as to what was in Defendant's backpack was a lawful extension of the initial stop, the Court must next determine whether the stop involved restraints sufficient to trigger Defendant's *Miranda* rights. The Second Circuit has noted that "custody remains the touchstone for application of [the *Miranda*] requirement," and that "[t]he test for custody is whether a reasonable person in defendant's position would have understood himself to be subjected to the restraints comparable to those associated with formal arrest." *United States v. Newton*, 369 F.3d 659, 671 (2d Cir. 2004). The Second Circuit additionally noted factors relevant to determining whether a lawful investigatory stop involves restraints generally associated with formal arrest: (1) "whether a reasonable person in the suspect's shoes would have understood that his detention was not likely to be temporary and brief"; and (2) "whether a person stopped under the circumstances at issue would feel 'completely at the mercy of the police.'" *Newton*, 369 F.3d at 675.

The Court finds that, based on all the evidence, Defendant was not in custody for the purposes of triggering a *Miranda* warning at the time he was questioned about his backpack. At that point, his seizure as a result of the stop had been brief, he was not handcuffed or otherwise restrained, and there were only two officers present and no evidence that either officer had their

hands on their weapons or that they made any other gestures or used a tone of voice that would have given Defendant an indication that he was in custody. The evidence presented with the motion papers and at the hearing indicates that Defendant was not even ordered or asked to let go of his bicycle at any point during the stop. In sum, there is simply no evidence to support an assertion that the statements made or physical actions taken by Defendant during this point in the stop should be suppressed based the fact that Officers Coleman and Birklin did not read him a *Miranda* warning; even setting aside the fact that physical actions are not protected by *Miranda*, no such warning was warranted because a reasonable person would not have understood himself to be in a situation comparable to formal arrest.[1]

For all of the above reasons, the Court finds that the questions about Defendant's backpack were based on reasonable suspicion and were not sufficient to trigger Defendant's *Miranda* rights. Consequently, Defendant's statements and other evidence need not be suppressed.[2]

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[1] The Court finds that whether the search of Defendant's backpack or whether Defendant's unsolicited statements to the effect that "that thing [the firearm] doesn't even work" would be somehow subject to the requirement to provide a *Miranda* warning is immaterial because, upon arresting Defendant post-chase, officers would have been entitled to search Defendant's backpack incident to that arrest and therefore would have found the firearm and ammunition even without Defendant's statements; of note, Defendant has not offered any persuasive evidence that the backpack was searched before Defendant was caught and arrested, while Officer Coleman explicitly testified that the backpack was not searched until after that arrest occurred.

[2] Because the Court finds that the stop and search was lawful, it need not (and does not) address the parties' arguments about whether Defendant voluntarily abandoned his backpack when he fled from Officers Coleman and Birklin.

C. Whether, in the Alternative, the Firearm[3] and Ammunition Would Have Been Inevitably Discovered Based on Defendant's Outstanding Warrant

After careful consideration, the Court answers this question in the affirmative for the reasons stated in the Government's opposition memorandum of law. (Dkt. No. 13, at 5-6 [Govt.'s Opp'n Mem. of Law].) To those reasons, the Court adds the following analysis.

"Under the 'inevitable discovery' doctrine, evidence obtained during the course of an unreasonable search and seizure should not be excluded 'if the government can prove that the evidence would have been obtained inevitably' without the constitutional violation." *United States v. Heath*, 455 F.3d 52, 55 (2d Cir. 2006). In other words, the relevant question is whether the disputed evidence would have inevitably been found through legal means but for the constitutional violation. Additionally, the Supreme Court has held that "it is not 'unreasonable' for police, as part of the routine procedure incident to incarcerating an arrested person, to search any container or article in his possession, in accordance with established inventory procedures." *Illinois v. Lafayette*, 462 U.S. 640, 648 (1983).

The Court finds in the alternative that, even if the original stop had been unlawfully extended due to Officer Coleman's questions about Defendant's backpack, any such unlawful action would not have prevented the officers from lawfully searching the backpack and

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[3] The Court notes that the fact that the firearm found in Defendant's backpack was inoperable does not affect the validity of the charges against him. *See United States v. Aloyan*, 651 F. App'x 676, 679 (9th Cir. 2016) (finding no abuse of discretion where district court excluded evidence that the firearm was inoperable because the ability to operate the firearm was not relevant to the charge of being a felon in possession of a firearm); *United States v. Dotson*, 712 F.3d 369, 370-72 (7th Cir. 2013) (concluding that an inoperable firearm that was significantly damaged, had missing or broken parts, and had extensive corrosion was still a firearm for the purposes of a prosecution for being a felon in possession of a firearm); *United States v. Yannott*, 42 F.3d 999, 1006 (6th Cir. 1994) ("[T]he law is clear that a weapon does not need to be operable to be a firearm.").

discovering the firearm and ammunition because they would have inevitably arrested him on his outstanding warrants. Defendant admits that he was in violation of his parole and that he had an outstanding warrant at the time of his arrest, and the evidence supports the existence of that warrant. (Dkt. No. 13, Attach. 1, at 2-3; Dkt. No. 14, at 6 [Def.'s Reply Mem. of Law].) Both officers testified at the hearing that, in response to a question, Defendant answered that his name was "Edwin Martinez." They also testified that, when they entered the provided name into their database, two warrants were found, including warrants under the name Edwin Martinez Cuello (along with a picture of Defendant), a fact which undermines Defendant's argument that providing only a portion of his name made it unlikely that those warrants would have become apparent, or that they could not be sure those warrants belonged to Defendant specifically without his full name or date of birth. (Dkt. No. 14, at 6 [Def.'s Reply Mem. of Law].) Defendant also argues that it is not clear that Officers Coleman and Birklin would have run Defendant's name through the warrant database during a stop for a minor traffic infraction; however, Officer Coleman testified at the hearing that it is permissible to arrest an individual for a violation of a city ordinance if he or she is unable to produce valid identification (as in this case) because of the need to confirm the individual's identity, and Officer Birklin testified that a warrant check would have in fact been conducted under the facts and circumstances present at that time, even if Defendant had not fled from the officers. Both officers' testimony therefore supports the Government's argument that there would have been further investigation into Defendant's identity and outstanding warrants based solely on the circumstances of the stop for the traffic violation even before Plaintiff attempted to flee. Officer Birklin additionally testified that it would be standard practice to search Defendant's backpack incident to his arrest.

As the Court noted previously in Part III.B. of this Decision and Order, the Supreme Court has noted that "ordinary inquiries incident to [a traffic] stop," include "determining whether there are outstanding warrants against the driver." *Rodriguez*, 135 S.Ct. at 1615. Given that checking for warrants is an ordinary inquiry even during a traffic stop, Officer Birklin's testimony that they would have run Defendant's name through the warrant database for the traffic infraction, and both officers' testimony that Defendant's warrants appeared when the name given was entered into that database, it is clear that the officers would have discovered that Defendant had an outstanding warrant even if Defendant had not fled and told the officers he had an outstanding warrant, and that they would have searched his backpack incident to the arrest for that warrant and inevitably found the firearm and ammunition that form the basis of the claim against Defendant.

For all of the above reasons, the Court alternatively finds that, even if Defendant had shown a constitutional violation, the firearm and ammunition recovered from his backpack would not need to be suppressed because they would have been inevitably discovered when the officers conducted a warrant check incident to the lawful stop for the traffic violation.

ACCORDINGLY, it is

ORDERED that Defendant's motion to suppress (Dkt. No. 12) is **DENIED**.

Dated: January 8, 2019
Syracuse, New York

Hon. Glenn T. Suddaby
Chief U.S. District Judge